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Brief

IN THE

Supreme Court of the United States.

October Term 1900.

WILLIAM R. REAGAN, *Appellant*,
v.
THE UNITED STATES. } No. 239.

STATEMENT OF CASE, ASSIGNMENT OF ERROR AND ARGUMENT FOR APPELLANT.

STATEMENT OF CASE.

This is an appeal from the Court of Claims. The appellant claims salary as a United States commissioner for the Indian Territory. He was appointed under § 39 of the act of May 2, 1890 (26 Stat. L. 98; 1 Supp. R. S. 737), as follows:

"That the United States court in the Indian Territory shall have all the powers of the United States circuit courts or circuit court judges to appoint commissioners within said Indian Territory, who shall be learned in the law, and shall be known as United States commissioners; but not exceeding three commissioners shall be appointed for any one division, and such commissioners when appointed shall have, within the district to be designated in the order appointing them, all the powers of commissioners of circuit courts of the United States.

"They shall be *ex officio* notaries public, and shall have power to solemnize marriages.

"The provisions of chapter ninety-one of the said laws

of Arkansas, regulating the jurisdiction and procedure before justices of the peace, are hereby extended over the Indian Territory; and said commissioners shall exercise all the powers conferred by the laws of Arkansas upon justices of the peace within their districts; but they shall have no jurisdiction to try any cause where the value of the thing or the amount in controversy exceeds one hundred dollars."

By the act of March 1, 1895, § 4 (28 Stat. L. 695; 2 Supp. R. S. 394), the number of commissioners was increased, as follows:

"That each judge of said court shall have the powers conferred by law upon the United States circuit courts to appoint commissioners within the district in which he presides, who, at the time of their appointment, shall be duly enrolled attorneys of some court of record of the United States or of some State, and shall be competent and of good standing, and shall be known as United States commissioners, but not exceeding six commissioners shall be appointed for any district hereinbefore constituted:

"*Provided*, That the present commissioners shall be included in that number and shall hold office under the existing appointments, subject to removal by the judge of the district where said commissioners reside, for causes prescribed by law. The judge for each district may fix the place where, or the time when, each commissioner shall hold his regular terms of court.

"The order appointing such commissioners shall be in writing and shall be spread upon the records of one of the courts of the district for which they are appointed; and such order shall designate, by metes and bounds, the portion of the district for which they are appointed. They shall have all the powers of commissioners of the circuit courts of the United States.

"They shall be *ex officio* notaries public and *ex officio* justices of the peace within and for the portion of the district for which they are appointed, and shall have the power as such to solemnize marriages."

The claimant having been, on March 1, 1895, one of the "present commissioners" (Finding I, Rec. p. 4), was continued in his office and his title protected by the proviso of the act just quoted. He continued to discharge the duties of his office until January 31, 1896, when the following letter (Finding II, p. 4) was entered on the records of the United States court in the Indian Territory, for the southern district:

"IN CHAMBERS,

"ARDMORE, INDIAN TERRITORY, *January 31st, 1896.*

"Hon. William R. Reagan, United States commissioner for the fourth commissioner's district in and for the southern district of the Indian Territory.

"SIR: I feel it my duty to declare the office of commissioner in that district vacant and to notify you that you are no longer United States commissioner for that district, and your successor will be named at once.

"There are many reasons which I could assign for my action in this behalf, but I will only suggest one now, that is, your age and the infirmities incident thereto render you, in my judgment, in many respects unfit for the office.

"Very respectfully, your obedient servant,

"C. B. KILGORE,

"Judge U. S. Dist. Court, S. Dist."

The letter was not sent to the claimant or served upon him, no hearing was had and no opportunity permitting the claimant to defend himself. He made written protest to the judge on the court records. On the same day (p. 5) John R. Williams was appointed commissioner of the claimant's district and, on February 10, 1896, he came to the claimant's office with two armed deputy marshals and demanded possession of the office. The claimant protested, but was compelled by superior force to yield possession to said Williams, and they joined in an instrument (p. 5) by which the rights of the claimant were preserved.

The claimant asserts that the order of removal was not in accordance with the statute quoted—the proviso to § 4 of the act of March 1, 1895; he maintains that he still holds the office, although wrongfully prevented from exercising its duties, and he claims the salary of $1,500 a year, fixed by the act of March 1, 1895, § 4 (28 Stat. L. 690; 2 Supp. R. S. 395).

ASSIGNMENT OF ERROR.

For error, the appellant says that the Court of Claims erred in holding that the letter and acts set forth in the findings constituted a removal of the appellant from the office of a United States commissioner for the Indian Territory, and in rendering judgment against him for salary of said office since said wrongful removal.

ARGUMENT.

This case turns upon the effect of the proviso to § 4 of the act of March 1, 1895, already quoted:

"That the present commissioners shall be included in that number and shall hold office under the existing appointments, subject to removal by the judge of the district where said commissioners reside, for causes prescribed by law."

The claimant's positions are that the attempted removal is void because:

(1) The cause assigned for the action of the judge is not a "cause prescribed by law."

(2) The procedure adopted by the judge, by which the claimant was given no notice of any charge against him and no hearing, is contrary to the statute, which necessarily implies notice and hearing as a condition to removal.

The Protective Purposes of the Statute.

The purposes of this statute are apparent on its face, not only to continue the present commissioners in office, but to give them protection in their offices from arbitrary removal. Other commissioners may, in the absence of such protection, be summarily removed, as may civil officers in general not so protected (*Ex parte* Hennen, 13 Pet. 230; Parsons *v.* United States, 167 U. S. 324). These commissioners are unmistakably singled out for special treatment. The Court of Claims recognizes this fact in the following words:

"What, then, is the meaning of the act of 1895 when it apparently attempted to differentiate the manner of removal of commissioners in the Indian Territory from the way commissioners in the circuit courts of the United States are usually removed?

"On the surface it would seem very unreasonable to say that nothing was meant by this statute. Generally speaking, it is not for the courts to hold a statute meaningless if a reasonable construction can give meaning or force to its provisions. In the consideration of the particular statute in question it should, like all other statutes presumably enacted for a purpose, be given such meaning as its language fairly implies and to the full extent of the accomplishment of its supposed objects."

But the court is unable to find in the statutes any "causes prescribed by law" for the removal of commissioners and, notwithstanding the assertion of these sound principles, declares that it "views the act of 1895 as incomplete" and decides that the removal of this officer, in the manner set forth in the Findings, is in accordance with law.

No Cause Prescribed by Law Asserted.

It does not concern the claimant if there is difficulty in determining what is a cause prescribed by law. He

has a right to the office until some cause prescribed by law is found. No law, either statute or common, prescribes the cause alleged in the letter of removal. He consequently continues to hold the office for want of sufficient ground of removal. It is not his duty to point out what may be a cause prescribed by law; his position is purely defensive. Unless it is shown that the cause asserted is a cause prescribed by law, the order of removal is void. Nevertheless, he can suggest more than one meaning of the words in question which would permit a lawful removal on proper charges.

Future Designation of Causes.

The participle "prescribed" may refer to the future as well as to the past. "Causes prescribed by law" is a phrase not necessarily meaning causes heretofore prescribed. It may as well mean causes to be prescribed. Its full import is causes heretofore or hereafter prescribed. If the words have no present application, they must apply to causes prescribed by future act of Congress.

If it is impossible to find in existing law any cause prescribed for the removal of the Commissioners, then the statute so fixes the tenure of those commissioners that they are not subject to removal until Congress prescribes some cause for removal. The Court of Claims in its opinion says:

"It seems most unreasonable, however, to say that Congress passed this law with the intention of making these territorial commissioners irremovable. Commissioners in other parts of the country are subject to removal and we can not adopt the view that by this legislation it was the policy to keep those in the Indian Territory in office until the legislative function of naming the specific causes should at some future time follow the general statute."

Yet the intention of Congress to give these particular commissioners a tenure superior to those possessed by other commissioners is expressed on the face of the statute, however unreasonable such an intention may seem to the Court of Claims. "It would seem very unreasonable to say that nothing was meant by this statute"; but nothing else is meant than to give them a tenure better than other commissioners. This may seem unreasonable and perhaps, if the provision had been submitted to some other tribunal than Congress, it would not have been adopted; but so Congress expressed its will and it should not be nullified because courts may question the wisdom of it. It is perfectly within the power of Congress, at any time, to prescribe causes for removal or even to change the tenure of these commissioners.

This is the true, because it is the most obvious, construction of this law. The permanent tenure of a judicial officer is not so great an evil as one would infer from the opinion of the Court of Claims, nor is it so absurd a consequence that the court is justified in treating this statute as "incomplete and imperfect," because its most natural meaning leads to this consequence. Many wise thinkers do not think it so direful a consequence, that a judicial officer should be irremovable, as that he should be removable at the will of the appointing power. To this effect, indeed, was the view expressed by Justice Field, Justices Gray and Brown concurring, in the dissenting opinion in McAllister *v.* United States, 141 U. S. 191.

The manifest purpose of the words is that the cause for removal shall be one designated by Congress and not one designated by the judge. That being so plainly expressed and no present cause being designated by Congress, which interpretation better accords with it, (*a*) that the cause is to be hereafter designated by Congress or (*b*) that the cause may be designated by the judge?

Causes Found in Adopted Statutes.

An examination of the acts of 1890 and 1895 authorizing these commissioners suggests another and broader meaning to the words in question than this just asserted.

By § 31 of the act of 1890 (26 Stat. L. 94; 1 Supp. R. S. 733) the laws of the State of Arkansas appearing in Mansfield's Digest are put in force in the Indian Territory, according to chapters relating to different subjects specified in this section.

By § 39, commissioners are authorized, who shall exercise all the powers conferred by the laws of Arkansas upon justices of the peace and the provisions of chapter 91 of the same laws, regulating the jurisdiction and procedure before justices of the peace are thereby extended to the United States commissioners so created for the Indian Territory. By the act of 1895, § 4 (28 Stat. L. 696; 2 Supp. R. S. 395) these provisions are re-enacted and additional chapters of Mansfield's Digest, 45 and 46, "regulating the jurisdiction and procedure before justices of the peace in civil cases be, and they are hereby, extended to and put in force in the Indian Territory."

The effect of these provisions is to put the commissioners in the place of justices of the peace in Arkansas. Consequently, when the removal of the commissioners is forbidden except for "causes prescribed by law," the laws of Arkansas contained in the designated chapters of Mansfield's Digest may be examined, if there be no Federal statute prescribing cause for removal of commissioners, in order to find what causes are prescribed by law for the removal of justices of the peace from office. Such examination shows many causes for their removal.

By chapter 45, § 1911, a justice is to be removed for failure to proceed against a person carrying weapons.

By chapter 46, § 2324, a justice is excluded from office on conviction of bribery or felony.

By chapter 46, § 2325, he is to be removed upon conviction of malfeasance or misfeasance, or willful neglect of duty.

By chapter 64, § 3306, he is to be removed for a failure to keep a record of his fees or for refusing due access to such record.

By chapter 129, § 5874, any officer collecting State or County moneys and fraudulently stating an account is to be removed.

If a cause is found against a commissioner in the Indian Territory which would, within the laws of Arkansas, have been cause for the removal of a justice of the peace, he may then be removed. Otherwise, protected by this provision of the statute, he is not subject to the power of removal on the part of the United States court.

The Court of Claims overlooks apparently the provisions of § 2325 of Mansfield's Digest when it cites (p. 9) "removal from one district into another," among the wrongs which would not be cause for removal from office. The provisions of this section are broad enough to permit a very substantial power of removal, at the same time giving effect to the plain provision of the law protecting this claimant's tenure.

It was suggested in argument and considered in the opinion of the court below that "cause prescribed by law" may be such causes as have been recognized by courts as lawful causes for removal of a commissioner, such as habitual drunkenness, sitting in judgment in interested cases (*In re* Eaves, 30 Fed. Rep. 21) or the encouragement of prosecutions by professional witnesses (*In re* Gilbert, 31 Fed. Rep. 277). The position has merit and might be necessary under other conditions, but the two constructions already suggested seem more obvious and should be admitted in preference. But this position should be readily preferred to the nullification of the statute accepted by the Court of Claims.

Notice and a Hearing Required.

The Court of Claims has given no weight to the doctrine so well fortified by authority as to have become a rule of statutory interpretation that where an officer's tenure is dependent upon good behavior or where the power of removal is to be exercised only for cause, then the power must be exercised subject to the condition that charges are duly made, that notice of these charges is given to the accused officer, that a hearing is granted and that an opportunity is afforded to adduce evidence on his behalf. A long line of decisions both in England and in this country enforces this principle.

In Page *v.* Hardin (8 B. Mon. [Ky.], 648, 672), a case was presented of summary removal by the governor, of the secretary of the commonwealth who held his office during a fixed term "if he so long behaved himself well." The court thus expressed itself:

"The secretary being removable for breach of good behavior only the ascertainment of the breach must precede the removal. In other words, the officer must be convicted of misbehavior in office. And we shall not argue to prove that in a government of laws, a conviction whereby an individual may be deprived of valuable rights and interest, and may moreover be seriously affected in his good fame and standing, implies a charge and trial and judgment, with the opportunity of defence and proof. The law, too, prescribes the duties and tenure of the office and thus furnishes a rule for the decision of the question involved."

In Dullam *v.* Willson (53 Mich., 392) it appeared that the constitution of Michigan authorized the governor to remove an officer "for gross neglect of duty, or for misconduct in office, or any other misfeasance or malfeasance therein."

The governor removed the appellee summarily, saying—

"I have this day for your official misconduct and habitual neglect of duty removed you from the office of trustee of the Michigan Institution for the Deaf and Dumb; the reasons for such removal I shall lay before the Legislature at its next session in detail."

It was objected that the governor could not remove without "charges, notice and an opportunity for defense."

The court sustained this objection in these terms:

"Unless it is the manifest intention of the section under consideration that the proceedings should be *ex parte* as well as summary, a removal without charges, notice and an opportunity for defense can not be upheld. The exercise of such power, in such manner, would be too despotic for any attempt at vindication in a country which boasts of the utmost liberty compatible with the safety of the State, and is entirely opposed to the genius of our free institutions."

An exactly similar doctrine is held in Pennsylvania in the cases of Commonwealth *v.* Slifer (25 Pa. St. 23) and Field *v.* Commonwealth (32 Pa. St. 478, 481). In each of these cases removal of an officer for cause was authorized by law, and in each case it was held that notice, hearing and an opportunity for defense were necessary, although the statutes wholly failed to declare any limitation upon the power of the removing officer, except the existence of the facts constituting sufficient cause.

The same doctrine is also announced in the case of State *v.* St. Louis (90 Mo. 19). See also Appeal of Willard, 4 R. I. 595, 597.

One of the earlier English cases on this subject, relied upon in the Michigan case and others just cited, is Ramshay's case (18 Ad. & El. [N. S.] 172, 190). The statute gave power to the chancellor "if he shall think fit,

to remove for inability or misbehavior any such judge appointed or hereafter to be appointed." The court, by Campbell, C. J. said:

"The chancellor has authority to remove a judge of a county court only on the implied condition prescribed by the principles of eternal justice, that he hears the party accused; he can not legally act upon such an occasion without some evidence being adduced to support the charges; and he has no authority to remove for matters unconnected with inability or misbehavior in the office of county court judge. Where the party complained against has had a fair opportunity of being heard where the charges, if true, amount to inability or misbehavior, and where evidence has been given in support of them, we think we can not inquire into the amount of evidence or the balance of evidence, the Chancellor, acting within his jurisdiction, being the constituted judge upon this subject."

In the case of Queen *v.* Archbishop Canterbury (1 El. & El. 545), it appeared that, upon the revocation of a license to act as curate, an appeal was given to the Archbishop, "who shall confirm or annul such revocation as to him shall appear just and proper." It was held that the appeal could not be exercised merely upon examination of the petition for appeal and the original record before the bishop, but that an actual hearing upon the charges must be given upon the appeal.

A similar doctrine is announced in Capel *v.* Child (2 Crompton & Jervis, 558, 574) and in King *v.* Gaskin (8 T. R. 209).

The principle relied upon in all these cases is stated per Bayley, J. in Williams *v.* Bagot (3 B. & C. 781, 786)—

"It is contrary to common justice that a party should be concluded unheard."

and by Chief Justice Marshall in Meade *v.* Deputy Marshal (1 Brock. 324; 16 Fed. Cases, 1291)—

"It is a principle of natural justice, which courts are never at liberty to dispense with, unless under mandate of positive law, that no person shall be condemned unheard or without an opportunity of being heard."

It will be observed that none of the statutes in these cases contained any express requirement of notice or hearing; the courts uniformly held this to be implied in the express provisions for tenure during good behavior or against removal without cause.

This line of decisions establishes as a fixed principle of construction that if cause for removal is required it is not enough that a cause be stated by the removing power; unless notice of the charge is given and an opportunity for defense afforded, the order of removal is wholly void. That rule of interpretation, thus fixed in English-speaking jurisprudence, founded on its fundamental principles, salutary in its effect, should be upheld in this court until a direct legislative command changes the rule thus sanctioned.

Sound reasons for the rule are given in the opinions cited. It would, indeed, be a naked right, of no value, to declare that an officer should be removed only for cause and then to permit his removal summarily upon a mere allegation of cause without the substantial protection afforded by an opportunity to answer the charges. His position would be worse than under a statute permitting unlimited removal, for under such a statute he goes out because the superior power wills it and without charge against him, while under a statute like the present he would be publicly charged with and convicted of cause for removal without a chance to respond.

To require notice and hearing does not diminish the discretion granted to the removing power, since, as is seen by the decisions cited, no court has asserted a right to interfere with the decision of the removing power as

to the pertinency and weight of the evidence adduced at the hearing. The power to decide is left where granted by law, but it is to be exercised only under due forms of law.

On the reason and authority here given, the claimant contends that the summary letter of removal, although stating a ground for justification, is void, because no notice and hearing was given and that the claimant still holds the office and is entitled to its salary.

Defenses.

Some positions taken below by the defense may be anticipated in this brief.

There was no acquiescence on the claimant's part. He placed on the records of the court his protest against his removal and gave up his office to his *de facto* successor only upon the exhibition of force. His acts were open and public, of such a nature that the public, including the officers of the government resident in the Indian Territory, knew that he continued to claim the office. A commissioner wrongfully deprived of his office who enters a protest both to the judge who removes him and the commissioner who succeeds him can not be expected to do more in the way of notice before bringing suit for his salary.

The most actively urged defense is that payment to a *de facto* officer defeats the claim of a *de jure* officer to the salary of his office. Certain decisions are cited to sustain this doctrine. These are chiefly from the State of New York, Smith *v.* Mayor, 37 N. Y. 518; Dolan *v.* Mayor, 68 N. Y. 274, and McVeany *v.* Mayor, 80 N. Y. 185. These decide that, if a salary has been paid prior to the decision of an action to determine title to the office, the officer *de jure* can not recover from the municipality. If paid after such a decision, he may recover it. It is

also held that an officer *de jure* can recover from the officer *de facto* the salary paid him. These decisions are declared to be based on the principle that salary is compensation for services, although the last rule seems quite inconsistent with it. In the last case, the court used this language (p. 192):

"It was recognized (in Dolan *v.* Mayor, 68 N. Y. 274) that the salary is the compensation for the rendition of services."

The other cases cited follow the New York decisions but without any considerable amount of independent reasoning, placing their decision in general, as in Steubenville *v.* Culp, 38 Ohio St. 18, on the same ground, that salary is the reward for services and can not belong to one who could not perform the services.

This principle is just the opposite of that recognized in the Federal jurisdiction, where a suit in the Court of Claims has long been the method of trying a disputed title to public office. So far back as 1871, in Ware *v.* United States, 7 C. Cls. 565, the Court of Claims held that the absence of a clerk in one of the Executive Departments on account of sickness was no defense to his claim for pay, although the head of the Department directed the deduction. In Sleigh *v.* United States, 9 C. Cls. 369, the doctrine was declared and has never since been overturned either there or here, that the right to salary was dependent on the legal holding of the place for which the salary was granted and not upon the actual rendition of service. The court said (p. 375):

"The incumbent of an office is *prima facie* entitled to to the lawful compensation thereof so long as he holds the office, though he may be disabled by disease or bodily injury from performing its duties. If it be an office held at the will of the appointing power, and that power does not see fit to have the compensation go on while the in-

cumbent is so disabled, the only remedy, in the absence of express law or regulation authorizing the stoppage of the compensation during the disability, is to remove the incumbent and so end his right to compensation. If the appointing power suffers him to continue in office, notwithstanding the disability, he is entitled to the compensation. This right may be cut off by law or regulation authorizing it; but not by the act of the appointing power without the authority of law or regulation."

In Rush *v.* United States, 33 C. Cls. 417, the Court of Claims said of the right of letter-carriers to their salaries (p. 432):

"In other words, their right to such salaries depends upon their appointment and qualification for the discharge of the duties pertaining to their respective offices, which is wholly a matter of statute."

So clearly, indeed, has this doctrine, that a suit for the salary is the right mode of trying a disputed title to Federal office, been settled in this jurisdiction that in such cases as McAllister *v.* United States, 22 C. Cls. 318; 141 U. S. 174; Parsons *v.* United States, 30 C. Cls. 222; 167 U. S. 324; Keim *v.* United States, 33 C. Cls. 174; 177 U. S. 290, as well as in the earlier case of McElrath, 12 C. Cls. 214; 102 U. S. 426, it was not even suggested that payment to a *de facto* successor in office would have been a defense to the claim. In all these cases this defense might have been raised and, if decided for the United States, would have determined the case. That it was not discussed by counsel or by either court in any of these cases, shows that the practice in this jurisdiction is otherwise settled. This court has distinctly recognized this fact in the case of Wales *v.* Whitney, 114 U. S. 564. The appellant was an officer of the Navy, summoned before a court-martial. He attempted, by writ of *habeas corpus*, to test the jurisdiction of the court-martial. The court

held that he had no right to the writ and could defend before the court-martial itself upon the grounds asserted in his petition, adding:

"If that court finds him guilty, and imposes imprisonment as a part of a sentence, he can then have a writ to relieve him of that imprisonment. If he should be deprived of office, he can sue for his pay and have the question of the jurisdiction of the court which made such an order inquired into in that suit. If his pay is stopped, in whole or in part, he can do the same thing."

One reason why the New York doctrine does not obtain under Federal jurisdiction and can not obtain in this case is because no mode is provided for determining title to Federal office by a direct proceeding on the part of any private citizen. It was decided by this court in Wallace *v.* Anderson, 5 Wh. 291, that an information for a *quo warranto* could not be maintained except at the instance of the Government, even by the consent of the parties, and in Nebraska *v.* Lockwood, 3 Wall. 236, it was held that the territorial authorities could not bring such a writ, that being reserved for the United States alone. The claimant could not test the right of his successor to this office in any other way than by this suit.

Even in New York, the principle of these cases is much shaken by the decision in the case of Fitzsimmons *v.* Brooklyn, 102 N. Y. 536. The question discussed was whether money earned by the claimant during the time when not receiving salary from a municipality could be deducted in accordance with the rule in cases of master and servant. The court said:

"But this rule of damages has no application to the case of an officer suing for his salary and for the obvious reason that there is no broken contract or damages for its breach where there is no contract. We have often held that there is no contract between the officer and the

State or municipality, by force of which the salary is payable. That belongs to him, as an incident of his office, and so long as he holds it; and, when improperly withheld, he may sue for and recover it. When he does so, he is entitled to its full amount, not by force of any contract, but because the law attaches it to the office, and there is no question of breach of contract or resultant damages, out of which the doctrine invoked has grown."

This decision admits that salary is not a matter of contract, by which services are rendered by the officer and payment made for these services by the State; it declares that salary is an incident attached to the office by law. It is entirely inconsistent with this principle to hold that the payment of a salary to a person not entitled to it is a defense to a suit by the person to whom the office rightfully belongs.

The New York rule has been denied in California, Dorsey *v.* Smyth, 28 Cal. 21; Stratton *v.* Oulton, 28 Cal. 45; Carroll *v.* Siebenthaler, 37 Cal. 193; in Pennsylvania, City of Philadelphia *v.* Rink, 2 Atl. Rep. 505; in Tennessee, Mayor *v.* Woodward, 59 Tenn. 499; and in Maine, Andrews *v.* Portland, 79 Me. 484. In Michigan the New York rule was first rejected, Stadler *v.* Detroit, 13 Mich. 346, but later followed, Auditors *v.* Benoit, 20 Mich. 176. Judge Cooley, in a dissenting opinion in this case, made the best statement to be found in the reports of the ground for holding that a *de jure* officer is entitled to the salary of his office, even if it has been wrongfully paid to a *de facto* officer. He approves the decision of the California Court in Dorsey *v.* Smyth, 28 Cal. 21, saying:

"This decision seems to me to be sustainable on the strongest reasons of public policy. A wrong is done to society and to public order in every instance in which the usurpation of a public office takes place; and the rules of law ought to be such as to give the greatest

possible discouragement to such a proceeding. The county authorities, in a case like this ought not to be told that they may countenance the intrusion with impunity and deliver over to a usurper the emoluments of an office to which he has neither a legal nor a moral claim. Such a rule encourages usurpations and tends to lower the standard of public morality. Public policy requires that municipal officers should be allowed to sanction or recognize the intrusion only so far as may be necessary to give the public the full benefit of protection, which the rule regarding the acts of officers *de facto* was designed to afford."

The doctrine for which the United States contends is ill founded in reason; it has but little authority to support it; it has never been sustained in the Federal Courts. It can not now be a defense to this claim.

Conclusion.

The appellant asks a reversal of the judgment against him because:

(1) Congress has plainly expressed that his tenure of office should be protected from the arbitrary exercise of the power of removal.

(2) No cause prescribed by law was asserted by the judge in entering the order of removal, or has since been claimed to exist, although a removal without such cause is forbidden.

(3) In requiring a cause prescribed by law as a condition of removal, it is a settled rule of law that notice of charges and a hearing upon such notice is required before the removal may lawfully be made.

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